IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 286 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VINUBHAI SAVABHAI KOLI - Appellant

Versus

STATE OF GUJARAT - Respondent

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Appearance :

MR BK OZA for Appellant.
MR KT DAVE, A.P.P. for respondent.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 09/01/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

Instant appeal filed under Section 374(2) of the

Code of Criminal Procedure, 1973, is directed against judgment dated May 23, 2001, rendered by the learned Special Judge, Surendranagar, in Special Case No.74 of 1998, by which the appellant is convicted for commission of offences punishable under Sections 363, 366 as well as 376 of the Indian Penal Code, and sentenced to suffer R.I. for five years and fine of Rs.5,000/-, in default, R.I. for one year, for commission of offence punishable under Section 363 IPC as well as R.I. for seven years and fine of Rs. 5000/-, in default, R.I. for 1 ½ year, for commission of offence punishable under Section 366 IPC and R.I. for ten years and fine of Rs.10,000/-, in default, R.I. for 2 ½ years, for commission of offence punishable under Section 376 IPC.

2. During the course of hearing of this application, Mr.K.T.Dave, learned Additional Public Prosecutor, has produced Fax-Message dated January 9, 2006 forwarded by the Deputy Superintendent, Ahmedabad Central Jail, to the Office of Government Pleader, Gujarat High Court, Ahmedabad, for perusal of the Court. It is ordered to be taken on record of the case. It indicates that the appellant i.e. Vinubhai Savabhai was suffering from brain-tumour, for which treatment he was admitted in

Civil Hospital, Ahmedabad and that he expired in Civil Hospital at 3.30 A.M. on July 15, 2005. The fact that the sole appellant has expired on July 15, 2005 is not disputed by Mr.B.K.Oza, learned counsel of the appellant. Section 394 of the Code of Criminal Procedure, 1973, inter alia, provides that every appeal under Section 377 or Section 378 shall finally abate on the death of appellant; whereas every other appeal filed under Chapter-XXIX of the Code shall finally abate on the death of the appellant. There is no manner of doubt that the sole appellant has died during the pendency of appeal which was filed under Section 374(2) of the Code. None of his near relatives has applied to this Court for leave to continue the appeal, within 30 days of the death of the sole appellant nor the record shows that any leave is granted to any near relative of the deceased-appellant to continue the appeal. Therefore, the appeal shall have to be treated as having finally abated on the death of sole appellant on July 15, 2005.

3. Accordingly, it is held that instant appeal has finally abated on the death of sole appellant on July 15, 2005, and is disposed of accordingly.

[J.M.PANCHAL,J.][H.B.ANTANI,J.]